Charitable Choice Act of 2001, which provides that, ''No funds provided through a grant or cooperative agreement to a religious organization to provide assistance under any [covered] program . . . shall be expended for sectarian instruction, worship, or proselytization. If the religious organization offers such an activity, it shall be voluntary for the individuals receiving services and offered separate from the program funded under subsection (c)(4).'' The required separation would not be met where the government-funded program entails worship, sectarian instruction, or proselytizing. Under subsection (j), there are to be no practices constituting ''religious indoctrination'' performed by an employee while working in a Government-funded program. The same is true for volunteers.

Claim that current charitable choice laws have been barely implemented

The Dissenting Views states that current charitable choice laws have barely been implemented. This is untrue. Existing charitable choice programs have had a significant impact on social welfare. Dr. Amy Sherman of the Hudson Institute has conducted the most extensive survey of existing charitable choice programs. Dr. Sherman concluded that, currently, ''All together, thousands of welfare recipients are benefiting from services now offered through FBOs [faith-based organizations] and congregations working in tandem with local and state welfare agencies.'' Dr. Amy S. Sherman, ''The Growing Impact of Charitable Choice: A Catalogue of New Collaborations Between Government and Faith-Based Organizations in Nine States'' (''Growing Impact''), The Center for Public Justice Charitable Choice Tracking Project (March 2000) at 8. Dr. Sherman also found that fears of aggressive evangelism by publicly funded faith-based organizations have little basis in fact. According to Dr. Sherman: ''[O]ut of the thousands of beneficiaries engaged in programs offered by FBOs [faith-based organizations] collaborating with government, interviewees reported only two complaints by clients who felt uncomfortable with the religious organization from which they received help. In both cases—in accordance with Charitable Choice guidelines—the client simply opted out of the faith-based program and enrolled in a similar program operated by a secular provider. In summary, in nearly all the examples of collaboration studied, what Charitable Choice seeks to accomplish is in fact being accomplished: the religious integrity of the FBOs working with government is being protected and the civil liberties of program beneficiaries enrolled in faith-based programs are being respected. Id. at 11 (emphasis added). Religious groups in the nine states Dr. Sherman surveyed also registered few complaints about their government partners. According to Dr. Sherman, ''The vast majority reported that the church-state question was a 'non-issue,' and that they enjoyed the trust of their government partners and that they had been straightforward about their religious identify.'' Id.

The success of existing charitable choice programs had led the National Conference of State Legislatures (''NCSL'') to support their expansion. According to Sheri Steisel, director of NCSL's Human Services Committee, ''In many communities, the only institutions that are in a position to provide human services are faith-based organizations. Providing grants to or entering into cooperative agreements with faith-based and other community organizations to provide government services is something that has proven effective in the states over the past five years. As welfare reform continues to evolve, it is important that government at all levels continues to explore innovative ways to provide services to its constituents. We are extremely pleased that the President is joining the states in exploring these new opportunities.'' News Release, ''Faith Based Initiatives Nothing New to Nation's State Lawmakers'' (January 30, 2001). Some states have embraced charitable choice to the tune of spending hundreds of thousands of dollars or, in some cases, millions in contracts with congregations and other organizations that would not otherwise have been eligible. See Associated Press, Survey Highlights Charitable Choice (March 19, 2001).

Claim regarding the number of ''charitable choice'' lawsuits filed

The Dissenting Views states that there have been five lawsuits filed challenging existing charitable choice laws. That is not true. The Dissenting Views mention three lawsuits that do not involve the terms of federal charitable choice programs, and another has already been dismissed as moot:

American Jewish Congress v. *Bernick*, (San Francisco County Superior Court, filed January 31, 2001) (challenging a program announced in August 2000 by the California Department of Employment Development to fund job training offered by groups that had never before contracted with government; charging that only religious organizations were eligible to compete). The State of California filed an affidavit in the case stating no TANF funds were used in the program.

Pedreira v. *Kentucky Baptist Home for Children*, Case No. — (E.D. Ky., filed April 17, 2000) (charging that the dismissal of an employee, who was employed to help the Kentucky Baptist Home for Children distribute state funds for the provision of child care, on the grounds that her sexual orientation was contrary to the employer's religious tenets violates the establishment of religion clause). No federal funds were used in this case, so the lawsuit does not involve a federal charitable choice program.

In *Lara* v. *Tarrant County*, 2001 WL 721076 (Tex.), the court stated that ''This case involves a dispute over a religious-education program in a Tarrant County jail facility. Our inquiry focuses on the Chaplain's Education Unit, a separate unit within the Tarrant County Corrections Center, where inmates can volunteer for instruction in a curriculum approved by the sheriff and director of chaplaincy at the jail as consistent with the sheriff's and chaplain's views of Christianity.''

American Jewish Congress and Texas Civil Rights Project v. *Bost*, No. — (Travis County, Texas, filed July 24, 2000) was dismissed as moot on January 29, 2001.

Claim that H.R. 7 requirement that an alternative unobjectionable on religious grounds is available is an ''unfunded mandate''

The Dissenting Views state that H.R. 7's requirement that an alternative be available that is unobjectionable to a beneficiary on religious grounds is an ''unfunded mandate.'' This is not true. As the Congressional Budget Office points out in its statement on H.R. 7, ''All of [the charitable choice] requirements are conditions of federal assistance, and therefore, are not mandates under UMRA [the Unfunded Mandates Reform Act].''

Claim that children could be subject to ''peer pressure'' to engage in proselytizing activity

The Dissenting Views worry about children being subject to ''peer pressure'' that leads them to take part in sectarian activities outside a federal program.

H.R. 7 excludes from covered programs those that include ''activities carried out under Federal programs providing education to children eligible to attend elementary schools or secondary schools, as defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801),'' except it does not exclude activities ''related to the prevention and treatment of juvenile delinquency and the improvement of the juvenile justice system, including programs funded under the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.).'' Children eligible to attend elementary schools or secondary schools is defined in Elementary and Secondary Education Act of 1965, 20 U.S.C. §8801(3), as follows: ''The term 'child' means any person within the age limits for which the State provides free public education.''

Also, H.R. 7 makes clear that any sectarian instruction, worship, or proselytizing activities must be conducted separate and apart from the federally-funded program, and any children taking part in any such activities would be doing so under the normal doctrines of guardianship law.

Claim that H.R. 7 allows discrimination against beneficiaries

The Dissenting Views incorrectly states that H.R. 7 allows discrimination against beneficiaries because its terms only refer to a prohibition on discrimination against beneficiaries on the basis of religion. First, courts will interpret ''on the basis of religion'' in the same way they do when interpreting the Title VII exemption, which is to also include within ''religion'' an organization's beliefs regarding lifestyle. Courts have held that the §702 exemption to Title VII applies not just when religious organizations favor persons of their own denomination. Rather, the cases permit them to staff on the basis of their faith or doctrine. See *Little* v. *Wuerl*, 929 F.2d 944 (3d Cir. 1991) (Catholic school declines to renew contract of teacher upon her second marriage); *Hill* v. *Baptist Memorial Health Care Corporation*, 215 F.2d 618 (6th Cir. 2000) (dismissing woman when she became associated with church supportive of homosexual lifestyle and announced she was lesbian). H.R. 7's provisions in subsection (h)(1) prevent religious organizations taking part in covered programs from discriminating against beneficiaries of grant programs on the basis of a refusal to hold a religious belief. Therefore, a religious organization could not discriminate against homosexual beneficiaries of grant programs because they do not adhere to a religious belief that homosexuality is a sin.

Also, Title VII does not exempt a religious organization from a discrimination claim based on sex, and Title VII treats discrimination against a woman because of her pregnancy as discrimination based on sex, and prohibits it. The answer is the same whether the woman is married or unmarried.

Further, H.R. 7 does not preempt State or local laws protecting beneficiaries from discrimination, including State or local laws that prohibit discrimination against homosexuals in the receipt of social services.

Claim that beneficiaries don't have a right under H.R. 7 to enforce discrimination claims in court

The Dissenting Views state that beneficiaries facing discrimination do not have a right to enforce their rights in court. This is patently untrue. Any beneficiary who is discriminated against may sue, in federal court, a State or locality under subsection (n) and get them to stop any discrimination going on in a covered program that denies a beneficiary access to a service on the basis of religion, a religious belief, or a refusal to hold a religious belief. A beneficiary who is protected by any other State or local law protecting beneficiaries in the receipt of services can enforce their rights in court under those laws as well. Beneficiaries are also protected against discrimination based on race under Title VI.